IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9241 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANJU @ KABRO SEVAKRAM SINDHI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9241 of 2003

MR MM TIRMIZI for Petitioner No. 1

MS MITA PANCHAL ld. AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 15/10/2003

ORAL JUDGEMENT

By way of this special civil application, the petitioner has challenged the order of detention passed against him by the Police Commissioner, Ahmedabad city on

6.6.2003 under the exercise of powers under sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the PASA Act" for short). The petitioner has been declared as 'bootlegger'.

The grounds served upon the petitioner and placed on record reveal that the detaining authority took into consideration the fact of registration of two crimes against the petitioner on 29.5.2002 and 15.4.2003 under sec. 66(1)(B), 65(E), 81 and 116(10(B) of the Bombay Prohibition Act, whereby it is alleged that the petitioner was dealing in foreign liquor. In addition to this, the detaining authority also relied upon two in-camera statements as recorded by the sponsoring authority on 3.6.203 and verified by the detaining authority on 5.6.2003 revealing the incidents of 25.4.203 and 2.5.2003 which are unreported to the police. From the above material, the order impugned came to be passed by the detaining authority.

Ld. advocate Ms. Qureshi for Mr MM Tirmizi for the petitioner and ld. AGP Ms. Panchal were heard at length. Affidavit in reply as filed by the detaining authority and placed on record is also taken into consideration.

Out of various contentions raised and controverted by ld. AGp, from the rival contentions, it appears that the matter can be considered and be decided on the sole ground whether the order impugned is bad in law on account of non-application of mind by the detaining authority to the vital aspect of the matter. Undisputedly, the grounds discloses that the petitioner was in judicial custody when the order of detention came to be passed and served upon the petitioner in crime No. 706/2003 registered on 15.4.2003. In this respect, the detaining authority reached to the subjective satisfaction that in the earlier crime registered against the petitioner, he was on bail. While in the other crime, registered against the petitioner, the petitioner was in judicial custody and was likely to be released on bail on moving the bail application and was likely to continue his illegal activity. In affidavit in reply filed by the detaining authority vide para-13 in this respect, the detaining authority has said that the detaining authority was well aware of the fact that the detenu was in judicial custody at the time of the passing of the order and, therefore, after proper application of mind, the order came to be passed on the material placed before him, facts and circumstances of the case well as

legal provision applicable to the facts of the case. It is further said by the detaining authority in the affidavit in reply that the petitioner was released on bail in the first offence within short time and indulged in the anti social activities as disclosed in the statements of the witnesses and also involved in the second offence which came to be registered on 15.4.2003 and could be arrested only on 5.6.2003. Therefore, the contention of the respondent is the subjective satisfaction of the detaining authority is not vitiated for non application of mind.

Having considered the rival contention and going through the record it transpires that the first offence came to be registered against the petitioner as back as on 29.5.2002 but he was arrested on 3.3.2003. Though it is not mentioned in the grounds but it is mentioned in the affidavit that after release on bail in the first offence, the petitioner indulged in illegal activities. Now as per the say of the detaining authority the petitioner might have been released on bail somewhere in March, 2003 and as per the say of the detaining authority if he continued his illegal activities than the sponsoring authority could collect the material only on 3.6.2003 in shape of in-camera statements revealed incident of 25.4.2003 and 2.5.2003. Therefore, this material may not came at the aid of the detaining authority to reach to the subjective satisfaction that the petitioner was likely to be released on bail, otherwise, while going through the record, there is no material even to reach to the subjective satisfaction that in the second crime registered against the petitioner, he was likely to be released on bail and was likely to continue his illegal activity. The facts of this case is therefore, squarely covered by the decision of the Apex Court in the matter of Amrutlal and others vs. Union Government through secretary, Ministry of Finance and others, as reported in AIR 2000 SC 3675. Consequently, the order of detention is vitiated on non-application of mind by the detaining authority towards the vital aspects of the matter and, there was no material to reach to the subjective satisfaction that the petitioner was likely to be released on bail. The order impugned is required to be quashed and set aside on this ground alone.

In the result, this special civil application is allowed. The order impugned in this special civil application passed on 6.6.2003 by the Police Commissioner, Ahmedabad city under the PASA Act against

the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs. DS permitted.

(J.R. VORA, J.)

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